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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,371	10/24/2003	Kenneth S. Zukor	FL/140	2596
28596 7590 03/07/2007 GORE ENTERPRISE HOLDINGS, INC. 551 PAPER MILL ROAD P. O. BOX 9206 NEWARK, DE 19714-9206			EXAMINER LU, JIPING	
			ART UNIT 3749	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/07/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Application No.

10/693.371

Applicant(s)

ZUKOR ET AL.

**Examiner**

Jiping Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/6/06 has been entered.

### ***Election/Restrictions***

2. Applicant's election with traverse of Group I, claims 1-21, 27-36 in the reply filed on 5/2/06 is acknowledged. The traversal is on the ground(s) that there is no serious burden of search placed on the examiner by allowing both groups of the claim inventions. This is not found persuasive because the examiner has clearly stated on Paragraphs 3 and 4 of the restriction requirement mailed on April 20, 2006 due to the different classification and diverse search, there is a serious burden of search resulted for conducting a quality examination and search. The search of Group I invention is different from the search of Group II invention.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 22-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/2/06.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-21, 27-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, 15, 27, 31-33 recites the limitation of "said vapor path". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-2, 4-5, 8-9, 11-12, 15-16, 18-19, 27-29 and 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Bender (U. S. Pat. 3,474,543).

Bender shows a removable cap assembly comprising a cap 31 comprising a housing 31 adjoined to a conformable section 33 having an internal recess (within 33) for engaging with stopper 30 and for sealing around a container opening (at 23, see figure 2), and a vapor path opening 25 (see Figures 3-5) for vapor passage between the container and an external atmosphere, a venting media (top portion of 33) oriented in the vapor passage/path forming a barrier isolating the container from the external atmosphere, a stopper 30 seated in a first position within the cap 31 adjacent to the recess. The cap 31 and venting media (see Fig. 5) are able to be removed from the stoppered container 19. The stopper 30 is movable between open and shut

positions for allowing passage of vapor. A top covering or lid 41 is also provided. As for the limitations, "is sealed to the venting media", "is sealed to the media via a heat seal/a gasket seal" in claims 29, 34, 35, they are viewed as functional or intended use limitations. As MPEP 2114 states, "[a] claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim". In this case, the limitations above do not add any structural limitations to the claim and Bender et al. discloses all the structural limitations.

8. Claims 15-21, 31, 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (U. S. Pat. 5,522,155).

Jones shows a removable cap assembly comprising a removable cover 10, 90 with a recess (See Fig. 13, at 94, inside 90) to seal a container (by gasket 94 and threads 95) and a vapor path opening (at 92) for vapor passage between the container and an external atmosphere, a venting media 93 attached to the cap 90, a stopper 92 seated in a first position within the cap 90 adjacent to the recess 94. The stopper is movable between open and shut positions for allowing passage of vapor. A lid 17 is also provided. With regard to the claimed material of the venting media, see col. 3, line 63 to col. 4, line 15.

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3, 10, 17, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender (U. S. Pat. 3,474,543).

The cap assembly of Bender as above includes all that is recited in claims 3, 10, 17, 30 except for the cap material and a gasket between the top covering and the venting media. With regard to the claimed single material in claims 3, 10, 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose any kind of desired material for cap in order to pursue an intended use, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. With regard to claim 30, examiner takes official notice that it is well known in the sealing art to use gasket for sealing purpose.

11. Claims 6-7, 13-14, 20-21, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender (U. S. Pat. 3,474,543) in view of Jones (U. S. Pat. 5,522,155).

The cap assembly of Bender as above includes all that is recited in claims 3, 6-7, 10, 13-14, 17, 20-21, 36 except for the material of cap and venting media. Jones teaches a cap assembly with a single material cap 90 and a venting media comprising hydrophobic material or expanded polytetrafluoroethylene material (col. 3, line 60 to col. 4, line 15) same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap assembly of Bender to include a single material cap in order to facilitate the manufacture and to substitute the venting media comprising hydrophobic material or expanded polytetrafluoroethylene material of Jones for the venting media of Bender in order to improve the resistance to water penetration.

### *Response to Arguments*

12. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

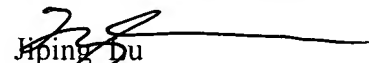
### *Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RINEHART KENNETH can be reached on 571 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jiping Du  
Primary Examiner  
Art Unit 3749

J. L.